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01-AFC-4
CALIF ENERGY COMMISSION

JUN 19 2003

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State of California
Energy Resources Conservation and Development Commission

In the matter of :)	Docket No. 01-AFC-04
)	
)	
)	Motion to postpone
Application for Certification)	adoption of the RPMPD
East Altamont Energy Center)	at the June 25, 2003 business
		Meeting and schedule a
		Public meeting to consider
		Changes to the RPMPD.

On June 3, 2003 the Committee for the EAEC held a conference to discuss the changes made to the PMPD. Several agencies appeared to express concerns in the area of Worker Safety and Fire Protection, Water Resources, and Air Quality. In addition the record was reopened to accommodate **purported** new evidence. While the meeting was held to simply review the changes proposed by the RPMPD several substantive issues were introduced and remain unresolved. It was also established that the applicant did not have site control over the recycled water a key component of the environmental review of this project and a condition of approval by several government agencies most notably the NMFS.

11/17/02
PROOF OF SERVICE (REVISED) FILED WITH
ORIGINAL MAILED FROM SACRAMENTO ON 6/18/03
PS

The committee expressed a desire to incorporate these concerns into the RPMPD. The committee also extended the comment period for some agencies until Thursday June 5, 2003. The committee recognizing the importance of the new information provided, cancelled the June 11, 2003 meeting and rescheduled it stating, "After reviewing the late comments and the parties' responses thereto, the Committee has determined that the comments do not substantively change the Committee's findings and conclusions in the RPMPD. Accordingly, the Committee will distribute a list of Errata forthwith to be incorporated into the RPMPD upon consideration by the full Commission."

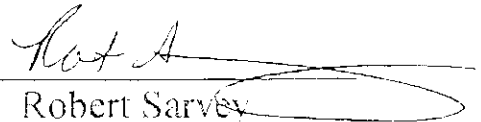
The June 13, 2003 errata contained substantial revisions and significant new information to the revised PMPD. The presiding member removed \$500,000 in mitigation from the Tracy Fire Department after properly awarding it in the RPMPD. The errata fails to resolve the crucial dispute on who will supply recycled water to the project and fails to recognize that the MHCSD may withhold this water due to the removal of fire department mitigation that it has insisted was theirs since the beginning of the proceeding. In a new development the DWR agreement with BBID received June 16 by the intervenor from CEC dockets, will require BBID to file a CEQA EIR on their water agreement affecting AKT Development (Tracy Hills) and also jeopardizing the fresh water supply. At the present time there is no guaranteed water supply fresh or recycled to the project due to the DWR's new requirement for a CEQA EIR on their water agreement with BBID.

CEQA requires adequate time for affected agencies and the public to respond to significant changes in the final EIR. **"If subsequent to the commencement of public review and interagency consultation but prior to final EIR certification, the lead agency adds "significant new information" to an EIR the**

agency must issue new notice and must recirculate the revised EIR or portions thereof for additional commentary and consultation." (Public Resources Code Section 21092.1 : CEQA Guidelines, Section 15088.5; Laurel Heights 11 (1193) 6 Cal 4th 1112 [26 Cal Rptr. 2nd 231] The affected agencies (Tracy Fire, MHCSD, Tracy Hills AKT Development) and the public need adequate time to review and comment on the proposed substantive changes that a business meeting in Sacramento will not provide. Intervenor moves that the business meeting be rescheduled to allow adequate time for a public meeting in the City of Tracy to review the substantive changes that have been made to the decision. Intervenor also requests a response in 24 hours due to the critical time element contained in this request.

6-19-2003

Date


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